IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL B. FORREST	:	
	:	
v.	:	**CIVIL NO. 00-CV-5032**
	:	
BELOIT CORPORATION	:	

MEMORANDUM AND ORDER

Kauffman, J. **August 2, 2005**

On February 10, 2004, following a jury trial, judgment was entered in accordance with the jury's verdict in favor of Defendant Beloit Corporation ("Defendant") and against Plaintiff Paul B. Forrest ("Plaintiff") in this product liability action. Presently before the Court is Plaintiff's Motion for Relief from Judgement Under Rule 60(b)(3) ("Motion") alleging fraud, misrepresentation, or other misconduct by an adverse party. For the reasons stated below, this Motion will be denied.

I. Background

This Court need not set forth the entire background and procedural history of the case for purposes of the present Motion. In brief, on October 15, 2000, this action was removed to federal court. Plaintiff brought suit against Defendant alleging negligence and strict liability based on severe injuries he sustained while operating a Gloss Calender Machine, which was manufactured and sold by Defendant. Motion at 2. The parties proceeded to jury trial on January 15, 2004. The company's defense at trial included testimony of an expert witness, Peter J. Schwalje, P.E., who testified, inter alia, that Plaintiff's accident and injuries did not stem from any defective design of Defendant's machine. Motion at 3. Following over two weeks of trial,

the jury returned a verdict for Defendant, concluding that the machine was not defectively designed and that Defendant was not negligent in its design, manufacture or sale of the product. Motion at 2. Following the verdict, Plaintiff filed a timely Motion for New Trial Pursuant to Rule 59(a). On April 16, 2004, this Court denied Plaintiff's Motion for a New Trial. Plaintiff next appealed to the Third Circuit on April 28, 2004; a decision on this appeal is currently pending.[1]

On March 17, 2005, Plaintiff filed the present Motion alleging that Peter J. Schwalje had misrepresented his expert qualifications and perjured himself on the following bases: (1) Schwalje testified at trial that he had received a Master of Science in Industrial Health and Safety Engineering from the New Jersey Institute of Technology, when the school's records reflect that he actually received a Master in Sciences with a major in Engineering Management and a specialization in Health and Safety Engineering; (2) Schwalje testified that he was employed by Public Service Electric and Gas Company (PSEG), while Plaintiff claims to have evidence that he was not so employed; (3) Schwalje testified that he was a member of the American Society of Safety Engineers and the Technical Association of the Paper and Pulp Industry (TAPPI), when in fact his membership in both of these organizations had lapsed at the time of trial; and (4) Schwalje testified that he taught Mechanical Engineering as an Assistant Professor at the Pratt Institute for three years, while the school's records reveal that he was employed as a part-time Visiting Assistant Professor, teaching four courses over three academic semesters. Plaintiff claims that these misrepresentations prevented him from fully and fairly litigating his case before

[1] Despite the pending appeal, this Court is empowered to entertain the present Motion. See Hancock Indus. v. Schaeffer, 811 F.2d 225, 239-40 (3d Cir. 1987).

the jury and require a new trial.

II. Legal Standard

Federal Rule of Civil Procedure 60(b)(3) provides, in relevant part, that a district court may relieve a party from final judgment where there is evidence of "fraud ... misrepresentation, or other misconduct of an adverse party." See also Stridiron v. Stridiron, 698 F.2d 204, 206-7 (3d Cir. 1983). The Rule requires that a moving party show by clear and convincing evidence (1) that an adverse party engaged in fraud or other misconduct and (2) that this conduct prevented the moving party from fully and fairly litigating his case. Id. at 207; Brown v. Pennsylvania R.R. Co., 282 F.2d 522, 527 (3d Cir. 1960). The rule also provides that any such motion must be filed not more than one year after the judgment is finalized. Fed. R. Civ. P. 60(b)(3). The one-year period in which to file a Rule 60(b)(3) motion starts to run from the date that any outstanding motion for reconsideration is denied and the judgment becomes final. See, e.g., Nat'l Passenger R.R. Corp. v. Maylie, 910 F.2d 1181, 1183-84 (3d Cir. 1990). Here, the motion for reconsideration was denied by the Court on April 16, 2004, meaning that Plaintiff's had until April 16, 2005 to file the present Motion. Consequently, Plaintiff's Motion is timely.

III. Analysis

Despite its timeliness, the Motion must be denied, as the Court finds that Plaintiff has not met his burden of establishing by clear and convincing evidence either that Defendant or its counsel committed fraud on the court, or that the alleged misrepresentations prevented Plaintiff from fully and fairly litigating his claims.

First, there is no clear evidence of fraud or misconduct, as Plaintiff has not established that the witness perjured himself. Some of the witness's statements Plaintiff cites as perjury are

not clearly contradicted by the evidence Plaintiff presents. For example, the witness's description of his degree is not falsified by the more specific school description presented by Plaintiff. Similarly, as is noted in Plaintiff's own exhibit, "[Schwalje] did technically serve as a 'part-time Visiting Assistant Professor' in three calendar years" meaning that his testimony regarding his history as a professor was arguably accurate. See Research Report, attached as Exhibit I to Motion. Regarding the witness's work at PSEG, Plaintiff's proffered evidence concedes that the witness "could have worked for an outside contractor, which PSEG frequently hires." Id. This is not a demonstration of the sort of willful, knowing, clear falsehood necessary to sustain a perjury charge. A more fundamental problem is that Plaintiff does not present legally cognizable evidence. To substantiate his claims of perjury, Plaintiff attaches to his Motion a "Research Report," completed by an unidentified individual for the purposes of some separate lawsuit, which contains hearsay statements regarding investigative efforts by this individual. This is not sufficient to meet Plaintiff's burden of producing clear and convincing evidence of the grave charge of perjury.[2]

Next, even if this Court were persuaded that there was some misconuct on the part of the witness, Rule 60(b)(3) provides for relief only with evidence of fraud, misrepresentations, or misconduct by an adverse party, or at least by party's counsel. See Murdoch's Estate v. Commonwealth of Pa., City of Philadelphia, 432 F.2d 867, 870 (3d Cir. 1970); Matter of Emergency Beacon Corp., 666 F.2d 754, 759 (2d Cir. 1981) (holding Rule 60(b) motion

[2] Plaintiff also attaches copies of letters from the New Jersey Institute of Technology's Registrar, Exhibit C, and the Pratt Institute's Human Resources Coordinator, Exhibit L. These letters do not constitute official school records and, as stated, it is not even clear that their contents contradict the witness's testimony.

appropriate where material has been purposefully withheld or incorrect or perjured evidence has been intentionally supplied by counsel or party); Favors v. United States, 2004 WL 1631417, at *2-3 (E.D. Pa. July 21, 2004). Here, Plaintiff alleges misrepresentations by a non-party witness, with nothing specifically linking these actions to Defendant or its counsel.

Finally, Plaintiff cannot meet his burden of establishing that he was denied a full and fair opportunity to litigate his case. See, e.g., Anderson v. Cryovac, Inc., 862 F.2d 910, 924 (1st Cir. 1988) (requiring Rule 60(b)(3) movant to establish substantial interference with his ability to litigate). To the extent that any of Plaintiff's allegations are true, this information was readily available to him at the time of trial had he conducted even the most minimal investigation as to the witness's credentials; Schwalje's curriculum vitae and expert report were provided to Plaintiff well in advance of trial and counsel had a full opportunity to depose the witness. Cf. Stridiron, 698 F.2d at 207 (recognizing failure to disclose requested discovery materials might constitute Rule 60(b)(3) misconduct, particularly if materials concern information "uniquely within" a party's knowledge); Matter of Emergency Beacon Corp., 666 F.2d at 759 (finding misconduct where documents were willfully withheld). While this Court recognizes that there is no due diligence requirement under Rule 60(b)(3), it is important to note that there is no allegation that Defendant failed to comply with discovery requests, failed to disclose known facts, or otherwise prevented Plaintiff from obtaining any pertinent information regarding its expert. While the information presented in the Motion, if true, may have been helpful to Plaintiff's cross-examination of the witness, there is no indication that the witness was not otherwise qualified to testify, that he would have been denied expert status (given his other qualifications), or that Plaintiff's ability to adequately prepare his case was in any way denied.

IV. Conclusion

For the reasons set forth above, this Court will deny Plaintiff's Motion Under Rule 60(b)(3). An appropriate Order follows.

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PAUL B. FORREST	**:**	
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BELOIT CORPORATION	**:**	

ORDER

AND NOW, this 2nd day of August, 2005, upon consideration of Plaintiff's Motion for Relief from Judgement Under Rule 60(b)(3) (docket no. 197), and Defendant's response thereto, it is **ORDERED** that the Motion is **DENIED**.

BY THE COURT:

S/Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.